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C.S.1001

SINGLE BENCH

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

WRIT PETITION NO. 1177 OF 2005

PETITIONER : Ganesh Enterprises, 94/A Light Industrial Area, Bhilai, Coal / coke Briquettes, Coal, Coke and General Order Suppliers, through – Proprietor – Ganesh Kumar, son of Late G. Pochanna, aged about 50 years

P.R. No. 1298/05
Presented by Shri. V.I.V.E.K. Rathore
dated 28-03-05

VERSUS

RESPONDENTS 1. Coal India Limited, Through: Its Chairman, 10, Netaji Subhash Road, Kolkata, (West Bengal).

2. Chairman cum Managing Director, South Eastern Coal Field Limited, 10 Seepat Road, Bilaspur, Tahsil and District Bilaspur (C.G.).

3. The General Manager (Sales), 10 Seepat Road, Bilaspur, Tahsil and District Bilaspur (C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.1082/2005

RISHI MINERALS

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1083/2005

M/S ANKIT STEELS

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1084/2005

AGRAWAL OIL EXTRACTION LIMITED

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1085/2005

RISHI INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1086/2005

AGRAWAL INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1087/2005

M/S C.P. COAL COMPANY

VS.

COAL INDIA LIMITED & OTHERS

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WRIT PETITION NO.1088/2005

BAGMAR BAUXITE INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1089/2005

AKASH FUELS

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1090/2005

SINGHAL ENTERPRISES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1177/2005

GANESH ENTERPRISES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1178/2005

SHRIKANT INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1179/2005

SHOLAY COKE BRIQUETES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1216/2005

UBEROI GLASS INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

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WRIT PETITION NO.1217/2005

M/S AGRAWAL LIME INDUSTRIES

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1225/2005

M/S AGRAWAL STRUCTURAL MILLS PVT. LTD.

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1226/2005

M/S AGRAWAL STEEL RE-ROLLING

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1227/2005

M/S H.S.R. RE-ROLLING

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1228/2005

M/S R.K. ORGANIC CHEMICALS

VS.

COAL INDIA LIMITED & OTHERS

WRIT PETITION NO.1260/2005

USHA GLASS WORKS

VS.

COAL INDIA LIMITED & OTHERS

Shri Y.C. Sharma, Advocate and Shri Vinod Lalchandani, counsel for the petitioners.

Shri P.S. Koshy, Advocate and Shri Vinod Deshmukh, counsel for the respondents.

Thakur Vijay Singh, Assistant Solicitor General for the Union of India.

Shri Yashwant Singh, Govt. Advocate for the State of Chhattisgarh.

ORDER

Heard the learned counsel for the parties.

2. This common order shall govern the disposal of the aforesaid cases. Writ Petition No.1082/2005 shall be the leading case.

3. By this petition under Article 226/227 of the Constitution of India, the challenge is made to the order dated 14/3/2005 stopping the supply of coal to the petitioners.

4. It is contended that the petitioner is a non-core sector unit. It was accorded coal linkage and was drawing coal supplies as a traditional linked consumer. Learned counsel for the petitioners pointed out that certain complaints were received that some of the industries are not in existence and the coal is being sold in black market. On such complaints being received, certain directions were issued by the Ministry of Coal and information was called for. Proforma known as check-list was supplied and the petitioners were required to fill up and supply information according to the check-list.

5. Learned counsel for the petitioners submitted that the petitioners companies submitted the information. They have filed the documents supplied and the information submitted within the stipulated period to the authorities, copies of the same have also been filed in the Court record.

6. Learned counsel for the petitioner further pointed out that though the petitioners companies have submitted the information, but some of the companies did not furnish the information as required by notice dated 16-12-2004 and they challenged the same

before the High Court of Madhya Pradesh. The High Court of Madhya Pradesh passed the order on 7/2/2005 vide Annexure - P/4 that if the petitioners are getting supply of coal as per linkage conditions, it shall continue till the next date of hearing as per existing linkage conditions. It is submitted that the petitioners units are not doing any pilferage, they are not doing any black-marketing.

7. Learned counsel for the petitioner submitted that so far as petitioners are concerned, if there is any deficiency it may be pointed out and the petitioners companies would do their best to satisfy the requirement. It is contended that stoppage of coal supply pursuant to the order dated 14-3-2005 has been made arbitrary and is illegal. It is further contended that even the notice dated 16-12-2004 does not permit the Department to do so.

8. The relevant portion of the notice dated 16-12-2004 (Annexure-P/3) is quoted below :

> *"You are requested to send afresh the copies of documents duly notarized in the office of the undersigned as per the check-list enclosed as Annexure-1. In case, any of the documents is not relevant to your unit, the reasons thereof need to be indicated with documentary evidence of competent authority. You are also requested to swear affidavit as per the enclosed proforma before the notary stating that coal received by you in the past has been fully consumed by your unit and the information/documents relevant to your unit as per the enclosed check-list is correct.*
>
> *You are requested to kindly ensure that the documents are received by the office of the undersigned latest by 17th January, 2005.*
>
> *You are also informed that in case of non-receipt of the above documents within the stipulated time, it shall be concluded that you have nothing to produce and SECL shall be at liberty to take further course of action without any further notice including stoppage of coal supply to your unit as*

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per the terms and conditions of linkage and supply of coal."

9. Learned counsel for the petitioners submitted that if the documents would not have been supplied within the stipulated time, then according to the notice it could be concluded that the unit has nothing to produce and SECL is at liberty to take further course of action without any further notice including stoppage of coal supply. It is further submitted that if the petitioners have supplied the documents within the stipulated period, the supply should not be stopped till the respondents come to the conclusion that the petitioners are doing the pilferage and black-marketing. It is also submitted that when the documents have been supplied then they should be scrutinized and deficiencies, if any, be pointed out in writing.

10. Learned counsel for the respondents contended that it had come to the notice of Ministry of Coal that there was a large scale black-marketing of coal which arose because of coal purchased by small scale industries through alleged linkage. It is further contended that the information having been received that the black marketing was being done, the State Government was to verify the genuineness of the Company. It is also contended that for verification various letters were written by the Coal India Ltd. and SECL to the State Government. The matter was taken by the Ministry and Hon. Minister for Coal wrote a letter dated 9th October, 2001 (Annexure-R/1) addressing to Hon. Chief Minister, which reads as under:

"Coal India Limited (CIL), a Public Sector Undertaking under the Ministry of Coal is a holding company, having seven production subsidiary company. CIL used to grant linkages to the Mankunwar Sector Consumers, based on

sponsorship from the concerned State Government departments. In view of total deregulation of pricing and distribution of coal, and with a view to remove unnecessary intermediary levels between the producer and consumer, CIL decided in June, 2001 to decentralize the system of coal sales by authorizing its subsidiary companies to frame appropriate policies. As a result, each subsidiary coal company has been finalizing its own sales policy for the non-core sector. Needless to add, the linkage for the core sector will continue through the present system of SLCs.

One of the main objectives of the new initiative is to try and meet the genuine requirements of the coal consumers and also to provide a direct interface between the coal companies and the consumers. However, it is likely that some linked consumers may not be physically existing or actually operating on the ground as of now. You would agree that genuine consumers of coal should not suffer due to manipulations of non-genuine customers. As such, it becomes essential to re-establish the bona fides of the consumers who have obtained coal linkages in the past from CIL based on state sponsorship. In this exercise, the State Governments have to play a most crucial role.

Coal companies viz. South Eastern Coalfields Limited has already addressed your officers/sponsoring authorities, with the request to verify the facts about linked consumers located in your State. Copies of the letters are enclosed herewith for ready reference. In this connection, I solicit your personal intervention so that the concerned officers are directed to get the verification completed within the stipulated time-frame, so that it is possible to identify the genuine consumers and meet their legitimate coal requirements. I would also like to reiterate that the coal companies intend to discontinue the coal supplies to the linked consumers in case no reply is received from the concerned State authorities before 30th November, 2001. As such, I would request you to get the verification done within the time-frame indicated. You will appreciate that the new policy cannot be left unimplemented pending State verification ad-infinitum.'

11. Learned counsel for the respondents contended that verification was done and through out the country, out of 4000 consumers, coal supplies to 1100 consumers were suspended and

2900 consumers were being allowed to draw coal from different companies of Coal India Limited. It is said that the matter regarding reverification of valid industrial linked units of non-core sector was considered from time to time and on 17/11/2004 it was communicated as under:

> *"Based on the directives of MoC, functioning of industrial linked consumers of various States were got verified by the authorities of respective States and Internal Vigilance of coal companies sometimes w.e.f. November, 2001 in respect of their (a) existence (b) status of current operation and (c) actual consumption of coal. On receipt of such verification report, further coal supplies to around 1100 consumers were suspended. As a result of this, only around 2900 are currently being allowed to draw coal from different coal companies of CIL. Since a considerable time has elapsed thereafter, there is a need to carry out verification exercise afresh. During this exercise, an emphasis needs to be given towards verification of their documents apart from their physical status. For the purpose of verifying documents, a checklist needs to be prepared by the coal companies themselves, so that their status in respect of actual uses of coal could be got established. A specimen checklist was earlier provided by CIL for the purpose of entering into FSAs which could be helpful for drawing final checklist.*
>
> *Sufficient number of teams, may, therefore, kindly be got constituted so as to enable them to complete the exercise, say within a period of three months.*
>
> *Based on the above verification, appropriate action for regulating the coal supplies be taken after issuing a show cause to such defaulter units."*

12. It is stated that thereafter after 17/11/2004 subsequent to this communication, a meeting was taken at Kolkata on 24/11/2004 by Hon. Minister with all CMDs and CVOs of coal companies where Secretary (Coal), Jt. Secretary (Coal) and Chairman, CIL were also present. During the said meeting, a checklist consisting of documents to be verified was placed before the Chair which could found the basis of reverification of the valid industrial linked units of non-core sector as advised earlier by the

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Chairman, CIL. While seeing the documents as listed in the checklist, the consumers may also be asked to furnish a sworn affidavit swearing therein that coal received by them in the past has been fully consumed by their units and the information relevant to their units in response to the said checklist is correct to the best of their knowledge and record.

13. Learned counsel for the respondents submitted that the co-operation of Central Government and the State Government is necessary. These parties were joined during the course of arguments. Thakur Vijay Singh, Asstt. Solicitor General for the Union of India contended that the Central Government would render all co-operation. In fact, the representative of the Central Excise appeared during the course of hearing and assured full co-operation. Shri Yashwant Singh, Govt. Advocate for the State of Chhattisgarh stated that the Secretary, Industry and the Chief Labour Inspector would render due co-operation and the instructions will be issued. The statements are recorded.

14. Learned counsel for the respondents further pointed out that the documents submitted have been examined by the Vigilance Department and the scrutiny of the documents has been made. He however submitted that after scrutinisation, show cause could not be given to the petitioners. It is submitted that the show cause will be given and the petitioners companies would be given opportunity. It is stated that the Management has no prejudice against anybody and the only object is that there should be no pilferage and no black marketing and the coal should be properly utilized and supplied to the units which are in existence.

15. Having considered the rival contentions, it is borne out that certain complaints were received by Ministry of Coal that there was large scale black marketing of coal. The verification was done and out of 4000 non-core sectors, 2900 were only found correct and 1100 were suspended. Again the exercise was made on 9/10/2001 and the matter was again taken up. The sponsoring is being done by the concerned State and their co-operation is necessary, as such the co-operation was sought by the Ministry on 9/10/2001, the verification within the time frame was indicated and then on 17/11/2004 the matter was again examined. The meeting was held, a checklist was prepared and on 29/11/2004 the checklist was approved and further it was directed to swear affidavit swearing therein that coal received by them in the past has been fully consumed by their units and the information relevant to the units in response to the said checklist is correct to the best of their knowledge and record. During the course of arguments, the petitioners submitted that they have complied with the requirements of checklist as applicable to them. It is contended that some linkage consumers may not be physically existing or actually operating on the ground as of now. The genuine consumers of coal should not suffer due to manipulations of non-genuine customers. The State Governments have to play most crucial role. The verification is to be done by the authorities who are empowered and the Vigilance Department of the respondents has started the process. Due co-operation will be given by the Central Government as assured by Thakur Vijay Singh, Asstt. Solicitor General for Union of India. The Chief Labour Inspector, Industries Department and the State Excise Department shall also render due co-operation as assured by their

respective counsel. It is further directed that the Collector and the Superintendent of Police of the District concerned shall also render due co-operation, since linkage is given based on sponsorship from the State Government's departments. The documents have already been filed by the petitioners in this Court as well, they may be verified and the action may be taken as early as possible preferably within six weeks. Paper verification may not serve the purpose, physical verification be made on the spot. Needless to say that if required on spot verification, photographs may be taken and the videography may also be done so that there may be complete transparency.

16. At this stage, Shri Sharma, learned counsel for the petitioners submits that the petitioners have filed the documents before the authority as required on 16/12/2004 as per checklist. They have also submitted the documents which are relevant for their units and reasons thereof have been mentioned with documentary evidence. In that view of the matter, the prayer is that those petitioners who have filed the documents before the authority as required on 16/12/2004 and have also filed the documents before this Court, they may be allowed to continue supply of coal as per linkage conditions till verification. Shri Koshy, learned counsel for the respondents, submits that pending decision, the petitioners who have filed the documents before the authority and this Court may be allowed to continue supply of coal as per linkage conditions.

17. Having thus considered, it is directed that pending decision the petitioners shall be allowed to continue supply of coal as per linkage conditions.

18. Subject to what has been stated above, these petitions stand disposed of.

19. Consequently, all the pending applications shall also stand disposed of.

Copy of this order be placed in the connected matters.

Parties are entitled to copy of this order.

Sd/-
Fakhruddin
Judge
1/4/2005

Hande/-